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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 GREGORY LYNN NORWOOD,
12 CDC# J-53407,

13 Plaintiff,

14
15 vs.
16
17 JEANNE WOODFORD, et al.,

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19
20 Defendants.

21 Civil No. 07-0057 WQH (JMA)

22 **ORDER:**

23
24 (1) GRANTING MOTION TO
25 PROCEED *IN FORMA PAUPERIS*,
26 IMPOSING NO INITIAL FILING
27 FEE, GARNISHING PAYMENT OF
28 \$350 FROM PRISONER'S TRUST
ACCOUNT, AND

29 (2) DISMISSING ACTION
30 WITHOUT PREJUDICE FOR
31 FAILING TO STATE A
32 CLAIM PURSUANT TO
33 28 U.S.C. §§ 1915(e)(2)(b)(ii)
34 & 1915A(b)(1)

35 [Doc. No. 2]

36 Plaintiff, Gregory Norwood, an inmate currently incarcerated at the California
37 Correctional Institution located in Tehachapi, California and proceeding pro se, has filed a civil
38 rights Complaint pursuant to 42 U.S.C. § 1983. In his Complaint Plaintiff alleges, while he was
39 incarcerated at Calipatria State Prison, he was placed in administrative segregation ("ad-seg")
40 in violation of his Fourteenth Amendment due process rights. Plaintiff also alleges that
41 Calipatria officials violated his Eighth Amendment rights when they deprived him of outdoor

1 exercise for a lengthy period of time. Plaintiff seeks compensatory and punitive damages.
 2 Plaintiff has also submitted a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28
 3 U.S.C. § 1915(a) [Doc. No. 3].

4 **I. Motion to Proceed IFP [Doc. No. 3]**

5 Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a
 6 district court of the United States, except an application for writ of habeas corpus, must pay a
 7 filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure
 8 to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C.
 9 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners
 10 granted leave to proceed IFP remain obligated to pay the entire fee in installments, regardless
 11 of whether their action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v.*
 12 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

13 Section 1915, as amended by the Prison Litigation Reform Act (“PLRA”), further
 14 requires that each prisoner seeking leave to proceed IFP submit a “certified copy of [his] trust
 15 fund account statement (or institutional equivalent) ... for the six-month period immediately
 16 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2). Using these certified trust
 17 account statements, the Court must assess an initial payment of 20% of (a) the average monthly
 18 deposit, or (b) the average monthly balance in the account for the past six months, whichever
 19 is greater, and collect that amount as the prisoner’s initial partial filing fee, unless he has no
 20 current assets with which to pay. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4); *Taylor*,
 21 281 F.3d at 850. Thereafter, the institution having custody of the prisoner must collect
 22 subsequent payments, assessed at 20% of the preceding month’s income, in any month in which
 23 his account exceeds \$10, and forward those payments to the Court until the entire filing fee is
 24 paid. *See* 28 U.S.C. § 1915(b)(2); *Taylor*, 281 F.3d at 847.

25 The Court finds that Plaintiff has submitted an affidavit that complies with 28 U.S.C.
 26 § 1915(a)(1) [Doc. No. 3] as well as a certified copy of his prison trust account statement
 27 pursuant to 28 U.S.C. § 1915(a)(2) and Civil Local Rule 3.2. Plaintiff’s trust account statement
 28 indicates that he has insufficient funds to pay a partial initial filing fee. Accordingly, the Court

1 hereby **GRANTS** Plaintiff's Motion to Proceed IFP [Doc. No. 3], and assesses no initial partial
 2 filing fee at this time. *See* 28 U.S.C. § 1915(b)(1) (court shall assess initial partial filing fee only
 3 "when funds exist"); 28 U.S.C. § 1915(b)(4) ("In no event shall a prisoner be prohibited from
 4 bringing a civil action . . . for the reason that the prisoner has no assets and no means by which
 5 to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.
 6 § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based solely
 7 on a "failure to pay . . . due to the lack of funds available to him when payment is ordered.").
 8 However, Plaintiff is required to pay the full \$350 filing fee mandated by 28 U.S.C. §§ 1914(a)
 9 and 1915(b)(1), by subjecting any future funds credited to his prison trust account to the
 10 installment payment provisions set forth in 28 U.S.C. § 1915(b)(2).

11 **II. Motion Requesting Certification of Class Action**

12 In addition to his Complaint, Plaintiff has filed a "Motion for Class Action Certification."
 13 However, to the extent Plaintiff seeks to challenge the violation of the rights of other detainees,
 14 he has no standing, for pro se litigants have no authority to represent the interests of anyone
 15 other than themselves. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("Art. III judicial power exists
 16 only to redress or otherwise to protect against injury to the complaining party.... A federal
 17 court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered some
 18 threatened or actual injury.") (quotations and citation omitted); *Johns v. County of San Diego*,
 19 114 F.3d 874, 877 (9th Cir. 1997); *see also C.E. Pope Equity Trust v. United States*, 818 F.2d
 20 696, 697 (9th Cir. 1987) (holding that while a nonattorney may represent himself, he has no
 21 authority to appear as an attorney for others). Thus, the Court **DENIES** Plaintiff's Motion for
 22 Class Action Certification.

23 **III. Sua Sponte Screening pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

24 **A. Standard of Review**

25 The PLRA also obligates the Court to review complaints filed by all persons proceeding
 26 IFP and by those, like Plaintiff, who are "incarcerated or detained in any facility [and] accused
 27 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
 28 conditions of parole, probation, pretrial release, or diversionary program," "as soon as

1 practicable after docketing.” *See* 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
 2 provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion
 3 thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from
 4 defendants who are immune. *See* 28 U.S.C. § 1915(e)(2)(B) and § 1915A; *Calhoun v. Stahl*, 254
 5 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited
 6 to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that
 7 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte dismiss an *in forma
 8 pauperis* complaint that fails to state a claim); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir.
 9 2000) (§ 1915A).

10 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
 11 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is
 12 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,
 13 324 (1989). However, 28 U.S.C. § 1915(e)(2) and § 1915A now mandate that the court
 14 reviewing an IFP or prisoner’s suit make and rule on its own motion to dismiss before effecting
 15 service of the Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *See Calhoun*,
 16 254 F.3d at 845; *Lopez*, 203 F.3d at 1127; *see also McGore v. Wrigglesworth*, 114 F.3d 601,
 17 604-05 (6th Cir. 1997) (stating that sua sponte screening pursuant to § 1915 should occur
 18 “before service of process is made on the opposing parties”); *Barren v. Harrington*, 152 F.3d
 19 1193, 1194 (9th Cir. 1998) (discussing 28 U.S.C. § 1915A).

20 “[W]hen determining whether a complaint states a claim, a court must accept as true all
 21 allegations of material fact and must construe those facts in the light most favorable to the
 22 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
 23 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)’’); *Andrews*, 398 F.3d at
 24 1121. In addition, while screening a Complaint under §§ 1915(e)(2) and 1915A, the Court has
 25 the same duty to liberally construe a pro se’s pleadings as it does under Rule 12, but it may not
 26 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of Regents of
 27 the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *Karim-Panahi v. Los Angeles Police
 28 Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988).

1 **B. Application to Plaintiff's Complaint**

2 As currently pleaded, it is clear that Plaintiff's Complaint fails to state a cognizable claim
 3 under 42 U.S.C. § 1983. "Section 1983 authorizes a 'suit in equity, or other proper proceeding
 4 for redress' against any person who, under color of state law, 'subjects, or causes to be
 5 subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or
 6 immunities secured by the Constitution.'" *Nelson v. Campbell*, 541 U.S. 637, 643 (2004)
 7 (quoting 42 U.S.C. § 1983); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en
 8 banc).

9 1. *Fourteenth Amendment Due Process Claims*

10 In his Complaint, Plaintiff claims that he was denied his right to due process during his
 11 disciplinary hearing resulting in his placement in administrative segregation. (Compl. at 4-11.)
 12 "The requirements of procedural due process apply only to the deprivation of interests
 13 encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of*
 14 *Regents v. Roth*, 408 U.S. 564, 569 (1972). State statutes and prison regulations may grant
 15 prisoners liberty interests sufficient to invoke due process protections. *Meachum v. Fano*, 427
 16 U.S. 215, 223-27 (1976). However, the Supreme Court has significantly limited the instances
 17 in which due process can be invoked. Pursuant to *Sandin v. Conner*, 515 U.S. 472, 483 (1995),
 18 a prisoner can show a liberty interest under the Due Process Clause of the Fourteenth
 19 Amendment only if he alleges a change in confinement that imposes an "atypical and significant
 20 hardship . . . in relation to the ordinary incidents of prison life." *Id.* at 484 (citations omitted);
 21 *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir. 1997).

22 In this case, Plaintiff has failed to establish a liberty interest protected by the Constitution
 23 because he has not alleged, as he must under *Sandin*, facts related to the conditions or
 24 consequences of his placement in Ad-Seg which show "the type of atypical, significant
 25 deprivation [that] might conceivably create a liberty interest." *Id.* at 486. For example, in
 26 *Sandin*, the Supreme Court considered three factors in determining whether the plaintiff
 27 possessed a liberty interest in avoiding disciplinary segregation: (1) the disciplinary versus
 28 discretionary nature of the segregation; (2) the restricted conditions of the prisoner's

1 confinement and whether they amounted to a “major disruption in his environment” when
 2 compared to those shared by prisoners in the general population; and (3) the possibility of
 3 whether the prisoner’s sentence was lengthened by his restricted custody. *Id.* at 486-87.

4 Therefore, to establish a due process violation, Plaintiff must first show the deprivation
 5 imposed an atypical and significant hardship on him in relation to the ordinary incidents of
 6 prison life. *Sandin*, 515 U.S. at 483-84. Plaintiff has failed to allege any facts from which the
 7 Court could find there were atypical and significant hardships imposed upon him as a result of
 8 the Defendants’ actions. Plaintiff must allege “a dramatic departure from the basic conditions”
 9 of his confinement that would give rise to a liberty interest before he can claim a violation of due
 10 process. *Id.* at 485; *see also Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996), *amended*
 11 by 135 F.3d 1318 (9th Cir. 1998). He has not; therefore the Court finds that Plaintiff has failed
 12 to allege a liberty interest in remaining free of ad-seg, and thus, has failed to state a due process
 13 claim. *See May*, 109 F.3d at 565; *Hewitt*, 459 U.S. at 466; *Sandin*, 515 U.S. at 486 (holding that
 14 placing an inmate in administrative segregation for thirty days “did not present the type of
 15 atypical, significant deprivation in which a state might conceivably create a liberty interest.”).

16 *I. Outdoor Exercise claims*

17 Plaintiff alleges that he was denied outdoor exercise from November 7, 2005 until
 18 December 16, 2005 in violation of his Eighth Amendment rights. (Compl. at 13.) “Whatever
 19 rights one may lose at the prison gates, ... the full protections of the eighth amendment most
 20 certainly remain in force. The whole point of the amendment is to protect persons convicted of
 21 crimes.” *Spain v. Procunier*, 600 F.2d 189, 193-94 (9th Cir. 1979) (citation omitted). The
 22 Eighth Amendment, however, is not a basis for broad prison reform. It requires neither that
 23 prisons be comfortable nor that they provide every amenity that one might find desirable.
 24 *Rhodes v. Chapman*, 452 U.S. 337, 347, 349 (1981); *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th
 25 Cir. 1981). Rather, the Eighth Amendment proscribes the “unnecessary and wanton infliction
 26 of pain,” which includes those sanctions that are “so totally without penological justification that
 27 it results in the gratuitous infliction of suffering.” *Gregg v. Georgia*, 428 U.S. 153, 173, 183
 28 (1976); *see also Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Rhodes*, 452 U.S. at 347. This

1 includes not only physical torture, but any punishment incompatible with “the evolving
 2 standards of decency that mark the progress of a maturing society.” *Trop v. Dulles*, 356 U.S.
 3 86, 101 (1958); *see also Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

4 Although prison administrators generally have broad discretion in determining whether
 5 to declare emergencies and impose “lockdowns” to control institutional disturbances,¹ the
 6 conditions imposed during the lockdown may constitute cruel and unusual punishment under the
 7 Eighth Amendment. *Hayward v. Procunier*, 629 F.2d 599, 603 (9th Cir. 1980). To assert an
 8 Eighth Amendment claim for deprivation of humane conditions of confinement, a prisoner must
 9 satisfy two requirements: one objective and one subjective. *Farmer*, 511 U.S. at 834; *Allen v.*
 10 *Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994).

11 “Under the objective requirement, the prison official’s acts or omissions must deprive an
 12 inmate of the minimal civilized measure of life’s necessities.” *Id.* This objective component is
 13 satisfied so long as the institution “furnishes sentenced prisoners with adequate food, clothing,
 14 shelter, sanitation, medical care, and personal safety.” *Hoptowit v. Ray*, 682 F.2d 1237, 1246
 15 (9th Cir. 1982); *Farmer*, 511 U.S. at 833; *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir.
 16 1981).

17 The subjective requirement, relating to the defendants’ state of mind, requires “deliberate
 18 indifference.” *Allen*, 48 F.3d at 1087. “Deliberate indifference” exists when a prison official
 19 “knows of and disregards an excessive risk to inmate health and safety; the official must be both
 20 aware of facts from which the inference could be drawn that a substantial risk of serious harm
 21 exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 835. Finally, the Court must
 22 analyze each claimed violation in light of these requirements, for Eighth Amendment violations
 23 may not be based on the “totality of conditions” at a prison. *Hoptowit*, 682 F.2d at 246-47;
 24 *Wright*, 642 F.2d at 1132.

25
 26 ¹ Title 15 of the California Code of Regulations, § 3383(a), which governs “States of
 27 Emergency” provides that “[a]n institution head may temporarily suspend any nonessential facility
 28 operation, procedure, service or function, and the normal time limits or schedules for such activity in
 order to prevent, contain or control a widespread facility disturbance. This may include but is not
 limited to confinement of inmates to quarters, a lock down, and the control of all individual inmate
 movement in affected areas.”

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2 In *Spain*, the court stated that “regular outdoor exercise is extremely important to the
 3 psychological and physical well being of the inmates.” *Spain*, 600 F.2d at 199. While a
 4 temporary denial of outdoor exercise would not necessarily rise to the level of a constitutional
 5 violation, Plaintiff’s allegations of a several month denial of outdoor exercise may meet the
 6 objective requirement for stating an Eighth Amendment claim. *See Lopez v. Smith*, 203 F.3d
 7 1122 (9th Cir. 2000) (complete denial of outdoor recreation for six and one half weeks was
 8 sufficient to satisfy the objective requirement). However, Plaintiff must also allege that
 9 Defendants acted with “deliberate indifference to an excessive risk to inmate health.” *Farmer*,
 10 511 U.S. at 837. Plaintiff has failed to allege that any of the named Defendants acted with
 11 “deliberate indifference.”

12 Thus, Plaintiff’s Complaint must be dismissed for failing to state a claim upon which
 13 section 1983 relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2)(b)(ii); 1915A(b)(1). Because
 14 it is not altogether certain that Plaintiff would be unable to allege additional facts which might
 15 state a claim against Defendant, however, the Court will provide Plaintiff with an opportunity
 16 to amend his pleading in light of the standards set forth above. *See Lopez*, 203 F.3d at 1130-31.

17 **IV. Conclusion and Order**

18 Good cause appearing, **IT IS HEREBY ORDERED** that:

19 1. Plaintiff’s Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 3] is
 20 **GRANTED**.

21 2. The Secretary of California Department of Corrections and Rehabilitation, or his
 22 designee, shall collect from Plaintiff’s prison trust account the \$350 balance of the filing fee
 23 owed in this case by collecting monthly payments from the account in an amount equal to twenty
 24 percent (20%) of the preceding month’s income and forward payments to the Clerk of the Court
 25 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).
 26 **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**
 27 **ASSIGNED TO THIS ACTION.**

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3. The Clerk of the Court is directed to serve a copy of this Order on James Tilton, Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502, Sacramento, California 95814.

IT IS FURTHER ORDERED that:

6 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
7 §§ 1915(e)(2)(b)(ii) and (iii) and 1915A(b)(1) and (2). However, Plaintiff is **GRANTED** forty
8 five (45) days leave from the date this Order is stamped "Filed" in which to file a First Amended
9 Complaint which cures all the deficiencies of pleading noted above. Plaintiff's Amended
10 Complaint must be complete in itself without reference to the superseded pleading. *See* S.D.
11 Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-alleged in the Amended
12 Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
13 1987). Further, if Plaintiff's Amended Complaint fails to state a claim upon which relief may
14 be granted, it may be dismissed without further leave to amend and may hereafter be counted
15 as a "strike" under 28 U.S.C. § 1915(g). *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir.
16 1996).

5. The Clerk of the Court is directed to mail a form § 1983 complaint to Plaintiff.

18 || DATED: March 15, 2007

William Q. Hayes
WILLIAM Q. HAYES
United States District Judge